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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MAX RETTELE, individually and as Guardian Ad Litem for Chase Hall, a minor; JUDY SADLER, individually and as Guardian Ad Litem for Chase Hall, a minor,

Plaintiffs - Appellants,

v.

LOS ANGELES COUNTY; LOS ANGELES COUNTY SHERIFF'S DEPARTMENT; DENNIS WATTERS, Deputy #235092; M. CLEAVES, Sergeant #016369; R. CAMPBELL, Deputy #013385; G. BURNS, Deputy #0213673; I. GONZALEZ, Deputy #108434; JACK JORDAN, Lieutenant #047392; L. DELMESE, Sergeant,

Defendants - Appellees.

No. 04-55614

D.C. No. CV-02-06262-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Argued & Submitted December 8, 2005
Submission deferred December 9, 2005

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Resubmitted December 19, 2005
Pasadena, California

Before: PREGERSON, COWEN[**], and THOMAS, Circuit Judges.

Plaintiffs Max Rettele and Judy Sadler brought a § 1983 action against Defendants Los Angeles County, the Los Angeles County Sheriff's Department, Sheriff's Deputy Dennis Watters, and several other members of the Los Angeles County Sheriff's Department alleging that they violated Plaintiffs' Fourth Amendment rights by conducting an unlawful and unreasonable search and detention. Plaintiffs appeal the district court's summary judgment order granting qualified immunity to Defendants. We review *de novo* both the district court's grant of summary judgment, *see Buono v. Norton*, 371 F.3d 543, 545 (9th Cir. 2004), and its qualified immunity determination, *see Sissoko v. Rocha*, 440 F.3d 1145, 1164 (9th Cir. 2006). We have jurisdiction under 28 U.S.C. § 1291, and we reverse.

"The determination of whether a law enforcement officer is entitled to qualified immunity involves a two-step analysis." *Moreno v. Baca*, 431 F.3d 633, 638 (9th Cir. 2005) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). First, we must determine whether the officer's conduct violated a constitutional right. *See id.* If we find that the officer violated Plaintiffs' constitutional rights, we next

[**] The Honorable Robert E. Cowen, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

consider whether that right was clearly established at the time the alleged violation occurred. *See id.* The contours of the right must have been clear enough that a reasonable officer would have understood that what he was doing violated the right. *See Anderson v. Creighton*, 483 U.S. 635, 640 (1987). Viewing the evidence in the light most favorable to the nonmoving party, "we must determine whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law." *Oliver v. Keller*, 289 F.3d 623, 626 (9th Cir. 2002).

Neither party disputes that Defendants had a valid warrant to search Plaintiffs' home. *See Michigan v. Summers*, 452 U.S. 692, 704-05 (1981). However, because (1) no African-Americans lived in Plaintiffs' home; (2) Plaintiffs, a Caucasian couple, purchased the residence several months before the search and the deputies did not conduct an ownership inquiry; (3) the African-American suspects were not accused of a crime that required an emergency search; and (4) Plaintiffs were ordered out of bed naked and held at gunpoint while the deputies searched their bedroom for the suspects and a gun, we find that a reasonable jury could conclude that the search and detention were "unnecessarily painful, degrading, or prolonged," and involved "an undue invasion of privacy," *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir. 1994). Accordingly, we find that there exists a genuine issue of material fact as to whether the search and detention

were unreasonable and in violation of Plaintiffs' Fourth Amendment rights. *See id.* at 876.

Having determined that Plaintiffs' factual allegations, if true, may establish a constitutional violation, we turn our attention to whether the law was clearly established, such that a reasonable officer would have known that the conduct was unlawful. Based on Plaintiffs' version of the facts, we find that a reasonable officer would have known that such a search and detention was unlawful under the circumstances. *See Wall v. County of Orange*, 364 F.3d 1107, 1111 (9th Cir. 2004). After taking one look at Plaintiffs, the deputies should have realized that Plaintiffs were not the subjects of the search warrant and did not pose a threat to the deputies' safety. To order Plaintiffs out of bed at gunpoint, early in the morning and before Plaintiffs had dressed, was "unnecessarily painful" and "degrading," and clearly an undue invasion of Plaintiffs' privacy. *Franklin*, 31 F.3d at 876. Thus, taking Plaintiffs' allegations as true, Defendants violated Plaintiffs' clear and well-established right to be free from unreasonable searches and detentions.

Because a genuine issue of material fact exists as to whether Defendants violated a constitutional right, and that right was clearly established at the time of

the search and detention, we find that Defendants are not entitled to qualified immunity at the summary judgment stage.

REVERSED and REMANDED.